

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0102
Sales and Use Tax
For Tax Periods 1989-1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with general information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax Assessment – Retail Merchant Doing Business in Indiana: Signs and Sign Installation.

Authority: 45 IAC 2.2-3-19; 45 IAC 2.2-4-2(a).

Taxpayer, as an out-of-state manufacturer and installer of commercial signs, originally protested the imposition of sales and use tax on taxpayer's sales made to its Indiana customers.

STATEMENT OF FACTS

The taxpayer is a Pennsylvania based manufacturer and installer of commercial signs. Taxpayer also provides sign maintenance services. Taxpayer has no designated Indiana representatives and maintains no Indiana business location. Instead, on those occasions where taxpayer makes sales to Indiana customers, taxpayer subcontracts the installation work to local contractors. Alternatively, the taxpayer ships the completed sign into Indiana and the customer independently arranges for the required installation work. The taxpayer did not collect any Indiana sales tax during the period covered by the audit.

I. Sales and Use Tax Assessment – Retail Merchant Doing Business in Indiana: Signs and Sign Installation.

The audit determined that the taxpayer's Indiana subcontractors, making installations of taxpayer's signs, were acting as taxpayer's representative agents. The audit also determined that taxpayer was liable for sales tax for those transactions made with Indiana customers. In making that determination, the audit cited 45 IAC 2.2-3-19 which states in part that,

“[t]he use tax shall be paid by the purchaser to the retail merchant, who shall collect the tax as agent for the state of Indiana. (b) Retail merchants who must collect use tax as agent for the purchaser [include]: (2) Any retail merchant engaged in selling at retail for use, storage, or consumption in Indiana and having any representative, agent, salesman [sic], canvasser or solicitor operating in Indiana under the authority of the retail merchant

or its subsidiary for the purpose of selling, delivering, or taking orders for the sale of any tangible personal property for use, storage, or consumption in Indiana.”

The audit determined that taxpayer was a retail merchant, taxpayer’s subcontractors were its Indiana agents, and that taxpayer’s Indiana agents were engaged in delivering personal property for use and consumption in Indiana. As such, taxpayer was obligated to register as a retail merchant, collect use tax from its Indiana based customers, and forward the tax to the state of Indiana.

Similarly, the audit held that repair services performed by the taxpayer for its Indiana customers were subject to sales tax. Typically the provision of taxpayer’s repair services also involved the transfer of associated tangible personal property. Although repair services alone are not normally subject to sales tax, 45 IAC 2.2-4-2(a) provides for the taxation of any such transaction when the price of the associated tangible personal property is not stated separately on the customer invoice. Because none of taxpayer’s customer invoices differentiated between the repair service charges and the cost of the associated tangible personal property, the audit assessed sales tax on the entire amount of those invoices.

Following the completion of the audit and in order to assist the taxpayer in determining its tax liability, taxpayer was provided details of those customers for whom sales tax assessments were proposed. Taxpayer was advised of the procedure to follow regarding those customers who had accrued use tax and was given until December of 1997 to provide to the Department additional information as directed. The taxpayer was further advised that the fact that its customers had accrued use tax did not necessarily prove the tax had been paid. In those instances where the taxpayer was unable to provide adequate documentation that the sales and use tax had been paid, it was recommended that the tax stand as assessed.

Taxpayer originally submitted a written protest on April 1, 1998, but failed to specify upon what legal or substantive issue it based its protest. However, the taxpayer submitted additional information which the Appeals Analyst determined was sufficient to document the payment of a portion of the taxes at issue.

Whatever issues the taxpayer intended to raise in its original protest letter are moot because, during the hearing, taxpayer waived all substantive, legal, and procedural issues regarding the audit’s assessment. Additionally, taxpayer waived its right to rely on any of the substantive legal, factual, or procedural issues raised by taxpayer’s Indiana customers. Instead, taxpayer has requested that a re-determination, based upon the additional information supplied by taxpayer during the intervening two and one-half years, be made of taxpayer’s remaining tax liability. Therefore, in the absence of any extant legal, substantive, or procedural issues, a supplemental audit is requested to determine the taxpayer’s remaining liability.

FINDING

Taxpayer’s protest is sustained subject to verification by audit.